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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1965

No. 598

GERHARD BRASCH,
Petitioner,
vs.
STATE COMPENSATION INSURANCE FUND,
STATE PERSONNEL BOARD,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR REHEARING

GERHARD BRASCH,
3035 Gough Street, Apt. 8,
San Francisco, California 94123,
Petitioner in propria persona.

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PETITION FOR REHEARING

Petitioner presents his petition for a rehearing of this Court's order dated December 6, 1965, denying the petition for a writ of certiorari to the Supreme Court of the State of California, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

I.

The respondent State Compensation Insurance Fund asked this Court to deny the petition of petitioner for a writ of certiorari because "no Federal question was properly raised or preserved in the State Courts".

This Court held in *Yick Wo v. Hopkins, Sheriff,* 118 U. S. 356, 373 that the equal protection of the laws extends to all persons "by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States". Petitioner explained in his petition and in his reply brief that he could not find an attorney willing to protect his Constitutional rights in a court of law. He respectfully submits that the effect of the denial of his petition is a classification of petitioners who ask this Court to review the denial of their claimed rights under the Fourteenth Amendment by the highest court of a state into two groups; one, entitled to a writ of certiorari, because its attorneys had claimed the denial of these rights timely and properly in the trial court, and another one, not entitled to a writ of certiorari, the group of petitioner, a layman, who could not find an attorney willing to file a complaint in his cause, whose complaint was his first endeavor in drafting a complaint, and whose attorneys who then accepted his case did nothing to protect his rights and returned his litigation papers to him only after the Municipal Court had entered a Judgment of Dismissal with Prejudice without opinion upon ex parte motion of the respondent

State Compensation Insurance Fund against him and a Judgment of Default by Court against them for the return of his litigation papers. Since, however, this Court held that the guarantees of protection contained in the Fourteenth Amendment extend to all persons, petitioner respectfully submits that the denial of his petition cannot be reconciled with the cited holding of this Court and that it will result in an unjustifiable discrimination between persons petitioning this Court for a writ of certiorari of the denial of like Constitutional rights unless this conflict is resolved.

II.

In moving for a Judgment of Dismissal with Prejudice against petitioner the respondent State Compensation Insurance Fund stated in its memorandum of points and authorities that in *Oppenheimer v. Deutchman,* 1955, 132 C. A. 2d Supp. 875, 281 P. 2d 650 "the action was dismissed with prejudice on ex parte motion of Defendant", whereas the Superior Court in this case had stated several times that the court below, while properly dismissing the action, should not have done it *with prejudice* and that the words "with prejudice" must be stricken from the judgment. The judge in the Municipal Court signed the draft of the Judgment of Dismissal *with Prejudice* prepared by the respondent but gave no grounds for entering this judgment even though it was not in accord with the decision in the *Oppenheimer* case. In his notice of appeal and in his briefs in the Appellate

Division of the Superior Court petitioner pleaded the denial of his rights under the Fifth and Fourteenth Amendments to the Constitution of the United States by the respondents. But the Superior Court, the District Court of Appeal and the Supreme Court of the State affirmed the Judgment of Dismissal with Prejudice without stating why petitioner should be forever barred from having a new trial and submitting his claim of the denial of his state and federal rights to a jury.

Petitioner respectfully submits that this Court should grant his petition for rehearing because the denial of his petition is in conflict with the decisions of this Court stated on page 31 of his petition for a writ of certiorari since its effect is an affirmation of the Judgment of Dismissal *with Prejudice,* a bar to petitioner from ever asserting his claim of the violations of his rights under the Fourteenth Amendment by the respondents, and a reward to the respondent State Compensation Insurance Fund for having successfully forever taken away the right of petitioner of asserting his claim of the denial of his Constitutional rights in a trial court by means of its false citation.

III.

In further support of his petition for rehearing petitioner respectfully submits that his case requires the settlement of substantial federal questions in the public interest, namely, that the respondents denied him the equal protection of the laws and deprived him of property for public use without compensation and

hearing in violation of the provisions of the Fourteenth Amendment, which serious charges the respondents never disputed. Concerning substantial federal questions this Court declared that it is of prime importance that no Constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality and that the State courts must act in subordination to the duty of this Court to enforce Constitutional liberties even when denied through spurious findings of fact in a state court; *Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 293, 298-299.

IV.

Petitioner petitioned in vain the State Personnel Board, the Governor, the Attorney General, and members of the State Legislature for redress of his grievances, explained in his complaint; no hearing was held. He filed a complaint in the Municipal Court in propria persona. The respondent State Compensation Insurance Fund demurred. Attorneys who then accepted his case promised him to plead the denial of his rights under the Fourteenth Amendment by the respondents in an amendment to his complaint. They asked the court for two extensions of time, but they filed no amendment, granted the Attorney General, counsel for the respondent State Compensation Insurance Fund, in an unfiled stipulation thirty days time to plead to the amended complaint of petitioner without informing him of this action while he was their client, and returned his litigation papers to

him only after the Municipal Court had ordered them to return them. Petitioner submits that the action of his former attorneys in his case cannot be reconciled with the historic concept that a lawyer is an officer of the court and that he is bound to work for the advancement of justice, while faithfully protecting the rightful interests of his clients; *Hickman v. Taylor*, 329 U. S. 495, 510.

In his appeal and in his briefs in the Appellate Division of the Superior Court petitioner, again in propria persona, pleaded the denial of his rights under the Fourteenth Amendment. His appeal was denied without opinion.

Petitioner respectfully submits that he raised the federal claim at the first opportunity available to him and that the Judgment of Dismissal with Prejudice without opinion, the denial of his petition for a hearing without opinion by the Supreme Court of the State of California, and the refusal of the executive, administrative and legislative agencies of the State to provide redress of his grievances violates his right to due process of law, in its primary sense of an opportunity to be heard and to defend his substantive rights in a trial court.

> "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded

to him some real opportunity to protect it." *Brinkerhoff-Faris v. Hill,* 281 U. S. 673.

V.

Petitioner urges this Court to grant his petition for rehearing because otherwise the benign provisions of the Fourteenth Amendment, which are guaranteed to all persons will become unenforceable, moot and of academic interest only in his case for the reasons set forth, and he submits furthermore that Rule 23(f) of the Rules of this Court must yield to the intent of the Fourteenth Amendment to the Constitution of the United States and the interests of justice. "The interest in finality of litigation must yield when the interests of justice would make unfair the strict application of the Rules of this Court." *United States v. Ohio Power Co.,* 353 U. S. 98.

CONCLUSION

For the reasons set forth above it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, a writ of certiorari issue to the Supreme Court of the State of California.

Dated, San Francisco, California,
December 20, 1965.

Respectfully submitted,
GERHARD BRASCH,
Petitioner in propria persona.

Certificate of Petitioner

I, Gerhard Brasch, petitioner in propria persona, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

Dated, San Francisco, California,
December 20, 1965.

Gerhard Brasch,
Petitioner in propria persona.